

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

The Financial Oversight and Management Board for
Puerto Rico,

as representative of

The Commonwealth of Puerto Rico, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

In re:

The Financial Oversight and Management Board for
Puerto Rico,

as representative of

The Puerto Rico Electric Power Authority,

Debtor.

PROMESA

Title III

No. 17 BK 4780-LTS

**OBJECTION AND RESERVATION OF RIGHTS OF NATIONAL PUBLIC FINANCE
GUARANTEE CORPORATION TO THE URGENT MOTION OF OFFICIAL
COMMITTEE OF UNSECURED CREDITORS FOR ORDER, PURSUANT TO
BANKRUPTCY CODE SECTION 926(A), AUTHORIZING COMMITTEE TO PURSUE
CERTAIN AVOIDANCE ACTIONS ON BEHALF OF PUERTO RICO ELECTRIC
POWER AUTHORITY**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("**COFINA**") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("**HTA**") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("**ERS**") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("**PREPA**") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

To the Honorable United States District Judge Laura T. Swain:

National Public Finance Guarantee Corporation (“**National**”) respectfully submits this objection and reservation of rights (the “**Objection**”) to the *Urgent Motion of Official Committee of Unsecured Creditors for Order, Pursuant to Bankruptcy Code Section 926(a), Authorizing Committee to Pursue Certain Avoidance Actions on Behalf of Puerto Rico Electric Power Authority* [Dkt. No. 1354] (the “**Motion**”).²

As the Committee correctly recognizes in the Motion, pursuant to section 926(a) of the Bankruptcy Code, the Court may only appoint a trustee “[i]f the debtor refuses to pursue a cause of action under section 544, 545, 547, 548, 549(a), or 550 of [the Bankruptcy Code].” 11 U.S.C. § 926(a). The Committee asserts that “[i]t is [its] view that the Oversight Board’s attempt to pursue the Lien Challenge on its own is tantamount to the Oversight Board refusing to bring such claims.” Motion ¶ 3. The Committee’s view is incorrect.

In its ruling on the proposed joint stipulation with respect to Commonwealth causes of action,³ the Court declined to second-guess the Oversight Board’s delegation of responsibility to the Committee, finding that “unique circumstances present a situation where the Oversight Board has decided to share its responsibility to prosecute certain claims, and it has, therefore, effectively refused to pursue the causes of action to the extent that it has sought . . . to have the Committee share responsibility for prosecution of the causes of action.” Apr. 24, 2019 Hr’g Tr. 236:21–237:2 (emphasis added). Here, it is National’s understanding that the Oversight Board has agreed to share the responsibility for prosecuting the Lien Challenge with AAFAF.

² Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

³ See *Urgent Joint Motion for Entry of Order Approving Stipulation and Agreed Order by and Among Financial Oversight and Management Board, its Special Claims Committee, and Official Committee of Unsecured Creditors Related to Joint Prosecution of Debtor Causes of Action* [Case No. 17-3283, Dkt. No. 6305].

Accordingly, given that the Oversight Board has delegated some responsibility for prosecution of the Lien Challenge to AAFAF, the Court should not undermine this delegation by appointing another party—the Committee—as trustee.

National reserves all of its rights to object to the Definitive RSA and 9019 Motion on all grounds, except with respect to the Trustee's entry into a tolling agreement on behalf of all Bondholders. National does not object to the Trustee's execution of a tolling agreement on behalf of all Bondholders with respect to any Lien Challenge. A tolling agreement will avoid potentially unnecessary litigation.

Dated: June 21, 2019
San Juan, Puerto Rico

**ADSUAR MUNIZ GOYCO
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CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Eric Perez-Ochoa
Eric Perez-Ochoa